



METROPOLITAN
TRANSPORTATION
COMMISSION

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August 25, 2009

REQUEST FOR QUALIFICATIONS
for
Smart Growth Technical Assistance
Letter of Invitation

Dear Consultant:

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) to assist MTC with the delivery of on-call technical assistance to support its smart growth planning work. Specifically, qualified firms or teams will be asked to work with local jurisdictions and regional agency staff in order to advance a number of different efforts, including the delivery of technical assistance directly to local jurisdictions.

This letter and its enclosures constitute the Request for Qualifications (RFQ) for this project. Responses should be submitted according to the instructions set forth in this RFQ.

Any addenda to this RFQ that may be issued by MTC will be posted at <http://www.mtc.ca.gov/jobs/>; it is the proposer's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

Requests for clarification or exception to RFQ provisions must be received no later than 4:00 p.m., September 14, 2009 to guarantee consideration.

Statement of Qualifications Due Date

Proposers must submit an original and four (4) copies of their Statement of Qualifications by 4:00 p.m., Wednesday, October 7, 2009. ***SOQs received after that date and time will not be considered.*** One (1) electronic copy must also be submitted. Submission of the electronic copy will not satisfy the SOQ submission deadline.

Submitted SOQs will be considered firm offers to enter into a contract and perform the work described in this RFQ for a period of ninety (90) days from their submission.

MTC Point of Contact

Proposals and all inquiries relating to this RFQ shall be submitted to Ms. Therese Trivedi, Project Manager, at the address shown below. E-mail inquiries may be directed to ttrivedi@mtc.ca.gov. For telephone inquiries, call (510) 817-5767.

Bill Dodd, Chair
Napa County and Cities

Scott Haggerty, Vice Chair
Alameda County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Chris Daly
City and County of San Francisco

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sue Lempert
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Jon Rubin
San Francisco Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Sperring
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Amy Worth
Cities of Contra Costa County

Ken Yeager
Santa Clara County

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Operations

Andrew B. Fremier
Deputy Executive Director,
Bay Area Toll Authority

Therese W. McMillan
Deputy Executive Director, Policy

Therese Trivedi, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, California 94607-4700
Fax: (510) 817-5848

Background

MTC and the Association of Bay Area Governments (ABAG) have been advancing smart growth planning in the Bay Area utilizing a variety of tools over the last ten years. The agencies' work on smart this issue led to the development of the FOCUS Program, also known as Focusing Our Vision. FOCUS is a regional incentive-based development and conservation strategy for the San Francisco Bay Area. FOCUS is led by the ABAG and MTC, with support from the Bay Area Air Quality Management District (BAAQMD), and the Bay Conservation and Development Commission (BCDC).

MTC, in coordination with ABAG, seeks one or more Consultants or Consultant teams to assist local jurisdictions and the regional agencies with specific technical assistance projects that support smart growth generally, and Transit Oriented Development (TOD) in particular. The types of work to be completed will depend on the exact needs of both local jurisdictions responsible with land use authority and the needs of the regional agencies that expect to modify key grant programs to advance TOD to the greatest extent possible. MTC will match the selected consultant(s) with the projects based on the needs of each project and the selected firms particular strengths and availability.

Consultant Qualifications

SOQs must demonstrate that the Consultant or Consultant team meets the following minimum consultant qualifications to be eligible for consideration for this project. A minimum qualification is met when the consultant or at least one firm on the consultant team has experience in the following:

- Municipal financing mechanisms (both standard and innovative) to finance TOD, including public and private infrastructure, housing, and other related TOD improvements.
- Market demand analysis for retail, commercial, and residential development and supporting financial analysis such as development of pro-formas and return on investment analysis.
- Infrastructure planning and design, including green infrastructure/low-impact development for storm-water management.
- Analysis of strategies to manage gentrification and minimize displacement, including comprehensive and targeted affordable housing strategies.
- Studying and reporting on station access for new and existing development, including the needs of pedestrians, bicycles, shuttles, transit, drop-off, and local circulation.
- Performing parking policy and demand analysis, with an emphasis on the use of *MTC's Parking Policies to Support Smart Growth Toolbox/Handbook*.

- Developing TOD-supportive zoning, form-based codes, and smart growth urban design guidelines to address building form and scale, urban character, connectivity and accessibility, and place-making.
- Performing sustainability analysis, including modeling of vehicle-miles-traveled (VMT) reductions related to TOD, evaluation of land use alternatives from an emissions/energy efficiency/equity standpoint, etc.
- Civic engagement, including public engagement strategies and workshops/charettes.
- Development of visualization, web-based, or other technical tool, such as GIS mapping or photo-simulations to reflect building types associated with adopted plans.
- Providing planning at brownfield locations.

MTC recognizes that one firm may not have all of the qualifications noted above. Therefore, MTC encourages the formation of teams of firms with complementary experience to satisfy all minimum qualifications.

Scope of Work, Schedule and Budget

A preliminary scope of work illustrating the type of tasks associated with this planning effort is included in this RFQ as *Appendix A, Preliminary Scope of Work*. All work will be assigned pursuant to MTC-initiated, deliverables-based task orders. A sample task order form is attached hereto as part of *Appendix D, Task Order Process*.

Funding for this project is subject to MTC budget approval, as well as approval of MTC's Transportation for Livable Communities guidelines. Based on these approvals anticipated in fall 2009, a maximum of seven hundred seventy one thousand one hundred thirty three dollars (\$771,133) is available for this effort. Additional funding may be added to the project during the project term.

MTC expects the work to commence on or about December 15, 2009 and to be completed by December 31, 2012 or when project funding is exhausted.

Disadvantaged Business Enterprise Participation

Effective June 2, 2009, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. CONSULTANT's DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC has established a Underutilized Disadvantaged Business Enterprise (UDBE) contract goal of 5% for contracts entered into as a result of this RFQ. Respondents are required to document their activities in the solicitation and selection of subconsultants on *Appendices E-3, E-4, and E-5, the Local Agency Proposer UDBE Information (Consultant Contracts), Local Agency Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts* respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see *Section IV.G* of the RFQ and *Appendix E*.

Proposers' Conference

A proposers' conference will be held on Thursday, September 10, 2009, at 3:00 p.m. at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in the Claremont conference room.

Evaluation Factors

An evaluation panel will rank proposals in accordance with the evaluation factors listed in *Section IV* of the RFQ. Interviews, if held, will occur on October 19, 2009.

MTC reserves the right to accept or reject any or all SOQs submitted, waive minor irregularities in SOQs, request additional information or revisions to offers, and to negotiate with any or all proposers. Any contract award will be to the firm or firms that present proposals that, in the opinion of MTC, are the most advantageous to MTC, based on the evaluation criteria in *Section III*.

Consultant Selection Timetable

September 10, 2009, at 3:00 p.m.	Proposers' Conference
September 14, 2009, by 4:00 p.m.	Closing date and time for requests for clarifications/ exceptions
No later than five (5) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions
October 7, 2009, at 4:00 p.m.	Closing date/time for receipt of proposals
October 19, 2009	Interviews (if required)
November 4, 2009	MTC Administration Committee Review
December 15, 2009 (approximate)	Recommendation of consultant(s) and execution of contract(s)

General Conditions

MTC will not reimburse any Consultant for costs related to preparing and submitting an SOQ.

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt.

MTC reserves the right in its sole discretion to determine which Consultant or Consultant teams qualifications, experience, available resources and ability to perform the required services best suit each project. Pre-qualification of a Consultant or Consultant team by the Administration Committee will not necessarily result in award of a contract.

MTC reserves the right in its sole discretion not to enter into any contract as a result of this SOQ.

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix C*. If a proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of

requests for clarifications/exceptions listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C-1*. Each policy or policies shall include MTC as additional insureds and an endorsement providing that such insurance is primary insurance and no insurance of MTC will be called on to contribute to a loss. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. MTC will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements must be brought to MTC's attention no later than the date for protesting RFP provisions listed above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

The resulting contract will be funded in part with federal funds. Federally required contract provisions are included in *Appendix E*.

Authority to Commit MTC

Based on an evaluation conducted by the selection panel, the Executive Director will recommend a Consultant or Consultant teams to the Administration Committee, which will commit MTC to the expenditure of funds in connection with the RFQ. Thank you for your participation.

Sincerely,



Ann Flemer
Deputy Executive Director, Policy

AF: TT

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REQUEST FOR QUALIFICATIONS

to the

METROPOLITAN TRANSPORTATION COMMISSION

SMART GROWTH TECHNICAL ASSISTANCE

August 26, 2009

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

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I. PURPOSE & PROJECT DESCRIPTION

A. Purpose

MTC seeks on-call consultant assistance with various technical assistance efforts related to its smart growth planning and funding programs, including *Focusing Our Vision* and the *Transportation for Livable Communities Grants*.

MTC and ABAG have been advancing smart growth planning in the Bay Area utilizing a variety of tools over the last ten years. The agencies' work on this issue led to the development of the FOCUS program, also known as Focusing Our Vision. FOCUS is a regional incentive-based development and conservation strategy for the San Francisco Bay Area. FOCUS is led by ABAG and MTC, with support from the Bay Area Air Quality Management District (BAAQMD), and the Bay Conservation and Development Commission (BCDC). FOCUS is the result of ten years of MTC support for transportation and land use planning and capital grants through the Transportation for Livable Communities grant program and ABAG's Regional Livability Footprint project adopted in 2002. FOCUS merges the efforts of the regional agencies to advance infill, transit neighborhood development.

B. Project Description

In order to further the goals of FOCUS, MTC and ABAG seek a Consultant or Consultant teams to assist local jurisdictions and the regional agencies with specific technical assistance projects that support smart growth generally, and transit oriented development (TOD) in particular. The types of work to be completed will depend on the exact needs of both local jurisdictions responsible with land use authority and the needs of the regional agencies that expect to modify key grant programs to advance TOD to the greatest extent possible. A preliminary scope of work illustrating the type of tasks associated with this project is included in this RFQ as *Appendix A*, Preliminary Scope of Work.

II. SCOPE OF WORK, SCHEDULE AND BUDGET

A preliminary scope of work for the project, is provided in *Appendix A*, which includes tasks that illustrate the type of assistance that may be requested of one or more firms or teams. All work will be assigned pursuant to MTC-initiated, deliverables-based task orders. The tasks in the executed Task Orders may include, but are not necessarily limited to those in *Appendix A*. A sample task order form is attached hereto as part of *Appendix D*, Task Order Process.

MTC anticipates that work will commence on or about December 15, 2009 and be completed by December 31, 2012 or when funds are exhausted.

Funding for this project is subject to MTC budget approval, as well as approval of MTC's Transportation for Livable Communities guidelines anticipated in fall 2009. Subject to these approvals, a maximum of seven hundred seventy one thousand one hundred thirty three dollars (\$771,133) is available for this effort.

III. FORM OF PROPOSAL

Sections that should be included in each SOQ are described below. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

A. Transmittal Letter

A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name and telephone number of a contact person if different from the signator. The cover letter should include a statement that the proposal is a firm offer to contract with MTC to perform the work according to the terms of the RFQ for ninety (90) days from the due date for submission.

B. Title Page

Title page showing the RFQ subject, the name of the proposer's firm, address, telephone number, name of contact person, and the date.

C. Qualifications and Experience

A detailed statement of the firm's qualifications and previous experience in conducting work similar to that described in the Preliminary Scope of Work (*Appendix A*). , and short resumes of the personnel the Consultant intends to use to perform the project, summarizing the individual's training and experience relevant to this project. This section should demonstrate experience and expertise in **all** minimum qualifications. If subcontractors are used, include the resumes of key subcontractor personnel, as well. A table showing each proposed staff person and their applicable skills and/or areas of expertise should be provided.

D. Similar Projects and MTC Contracts

A summary (no longer than one page each) of at least three (3) projects similar in subject matter and scope to this project, including the client agency, the contract term and amount, and a contact person (with telephone number and e-mail) who may be contacted as a reference.

A list of any contracts with MTC (or Bay Area Toll Authority (BATA) or Service Authority for Freeways and Expressways (SAFE)) by the Consultant or any of its subconsultants in the past three (3) years, including a brief description of the scope of work, the contract amount, date of execution and the MTC project manager.

E. Work Sample

At least one copy of one report or final work product prepared by key members of the Consultant team in which scope and details are comparable to those required under this project, which identifies the authors.

F. Hourly Rates

The fully loaded hourly rates for all personnel to be used on the project, including subconsultants. Fully-loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies.

G. Forms and Certificates

1. A signed California Levine Act statement (*Appendix B*)
2. A signed Insurance Provisions document (*Appendices C-1*).
3. **Federally-required certifications** related to lobbying, debarment, and subcontractor information (*Appendices E-1, E-2, E-3, E4, and E-5*).

IV. PROPOSAL EVALUATION

A. Review for General Responsiveness

The Project Manager, in consultation with the MTC Office of General Counsel, will conduct an initial review of the SOQs for satisfaction of the minimum qualifications and inclusion of the items requested in Form of Proposal above. Proposers failing to meet the minimum qualifications **or to satisfy the Underutilized Disadvantaged Business Enterprise (UDBE) requirements in this RFQ** will not be considered. Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Form of Statement of Qualifications may be considered responsive, if evaluation in every criterion is possible. **MTC reserves the right to request additional information from responsive proposers prior to evaluation.**

B. Evaluation

Responsive SOQs meeting the minimum qualifications will then be evaluated by a panel of staff representatives from MTC and other partner agencies, based on the following evaluation factors. The first factor shall be valued at 75% of the evaluation outcome. The last two factors are of approximately equal importance, totaling 25% of the outcome.

- Firm and assigned staff expertise and experience in conducting similar types of projects involving all qualifications requested;
- Approach to conducting and completing the project, including but not limited to understanding of the purpose and requirements of the project and approach to dealing with project challenges or obstacles;
- Hourly rates; and

- Presentation effectiveness, including the abilities to write, illustrate, and present both qualitative and quantitative information in a clear and illustrative manner. Oral communication skills will be evaluated if interviews are held.

Following the evaluation, the panel may elect to recommend award to one or more firms or teams or may develop a “short list” of firms or teams with a reasonable likelihood of being awarded a Contract for interviews. References may be checked for one or more of such short-listed proposers prior to final evaluation.

MTC reserves the right to not convene interviews and to make an award on the basis of written proposals, alone. Further, MTC reserves the right to accept or reject any and all submitted proposals, to waive minor irregularities, and to request additional information from the proposers at any stage of the evaluation.

C. Recommendation for Pre-Qualification and Award

The MTC Project Manager will then recommend one or more firms or teams to the Executive Director. If he agrees with the recommendations, he will request the approval of the Administration Committee to establish a pre-qualified list of consultants or consultant teams eligible for award of Smart Growth technical assistance contracts. One or more contract awards may be recommended at the same time.

IV. GENERAL CONDITIONS

A. Limitations

This RFQ does not commit MTC to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFQ.

B. Award

Any award made will be to the Consultant whose proposal is most advantageous to MTC, based on the evaluation criteria outlined above.

C. Binding Offer

A signed SOQ submitted to MTC in response to this RFQ shall constitute a binding offer from Consultant or Consultant teams to contract with MTC according to the terms of the proposal for a period of ninety (90) days after its date of submission, which shall be the date proposals are due to MTC.

D. Contract Arrangements

MTC reserves the right in its sole discretion to determine which Consultant or Consultant teams' qualifications, experience, available resources, and ability to perform the required services best suit each project. Selection of Consultant or Consultant team will not necessarily result in award of a contract.

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix C*. If a proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C-1*. Each policy or policies shall include MTC as additional insureds and an endorsement providing that such insurance is primary insurance and no insurance of MTC will be called on to contribute to a loss. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. MTC will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements must be brought to MTC's attention no later than the date for protesting RFP provisions listed above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

The resulting contract will be funded in part with federal funds. Federally required contract provisions are included in *Appendix E*.

All work will be assigned pursuant to MTC initiated task orders. The task orders resulting from this RFQ will be compensated as a fixed price contract on the basis of satisfactory completion of deliverables. A sample task order form is attached hereto as part of *Appendix D, Task Order Process*.

E. Selection Disputes

A firm/team may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Consultant on the grounds that MTC procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than five (5) working days prior to the date SOQs are due, for objections to RFQ provisions; or
2. No later than three (3) working days after the date the firm/team is notified that it did not meet the minimum qualification, did not satisfy DBE requirements, or was found to be non-responsive; or
3. No later than three (3) working days after the date on which the contract is authorized by the MTC Administration Committee or the date the firm is notified that it was not selected, whichever is later, for objections to consultant selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the Executive Director. The Executive Director will respond to the protest in writing, based on the recommendation of a MTC review officer. Authorization to award a contract to a particular firm by the MTC Administration Committee shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the protesting proposer wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration Committee, no later than three (3) working days after receipt of the written response from the Executive Director. The Administration Committee's decision will be the final agency decision.

F. Public Records

This RFQ and any material submitted by a proposer in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Proposals will remain confidential until the MTC Executive Director has authorized award.

G. Disadvantaged Business Enterprise (DBE) Policy

Effective June 2, 2009, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. CONSULTANT's DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC has established a Underutilized Disadvantaged Business Enterprise (UDBE) contract goal of 5% for this contract. Respondents are required to document their activities in the solicitation and selection of subconsultants on *Appendices E-3, E-4, and E-5, the Local Agency Proposer UDBE Information (Consultant Contracts), Local Agency Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts* respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see the Letter of Invitation, and *Appendix E*.

1. Terms as used in this document:
 - The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
 - The term "Underutilized Disadvantaged Business Enterprise" or "UDBE" is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
 - Black American
 - Asian-Pacific American
 - Native American
 - Women

- The term “proposer” refers to firms submitting SOQs in response to this RFQ; the term “proposal” means the SOQ.
 - The term “Contract.” also means Agreement.
 - The term “Small Business” or “SB” is as defined in 49 CFR 26.65.
 -
2. Authority and Responsibility
- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.
3. Submission of UDBE and DBE Information
- If there is a UDBE goal on the contract, a “Local Agency Bidder/Proposer-UDBE (Consultant Contract) Commitment” (Exhibit 10-O(1)) form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.
- A “Local Agency Proposer/Bidder-DBE (Consultant Contract)-Information” (Exhibit 10-O(2)) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans. For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.
4. DBE Participation – General Information
- It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:
- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE proposer, not submitting as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
 2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
 3. The proposer, prior to bidding, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The prime contractor shall list only one subcontractor for each portion of work as defined in its proposal and all DBE subcontractors should be listed in the list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
5. Resources
- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <<http://www.dot.ca.gov/hq/bep/>>.
- Click on the link in the left menu titled Find a Certified Firm
 - Click on Query Form link, located in the first sentence
 - Click on Certified DBE's (UCP) located on the first line in the center of the page
 - Click on Click To Access DBE Query Form
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
 - “Start Search,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form
- C. How to Obtain a List of Certified DBEs without Internet Access
- DBE Directory:** If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the

directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. Materials or supplies purchased from DBEs count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:
 - A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
 - B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
 - C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.
 - D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

H. Prompt Payment of Subcontractors

Under 49 CFR Part 26, Consultants are required promptly to pay subcontractors (DBE and non-DBE) all amounts to which the subcontractors are entitled for work that has been satisfactorily performed and for which the Consultants have received payment, in accordance with the terms of the applicable subcontracts. (See 49 CFR § 26.69.) Accordingly, Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the MTC. Any subcontract in excess of \$25,000, entered into as a result of this procurement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

APPENDIX A, PRELIMINARY SCOPE OF WORK

The selected consultants or consultant teams shall assist local jurisdictions and the regional agencies with specific technical assistance projects that support smart growth generally, and Transit Oriented Development (TOD) in particular. The types of work to be completed and associated deliverables will depend on the exact needs of both local jurisdictions responsible with land use authority and the needs of the regional agencies that expect to modify key grant programs to advance TOD to the greatest extent possible.

I. Tasks

The services to be performed by the selected Consultant or Consultant teams shall consist of those directed by MTC through signed task orders. The MTC issued task orders will identify specific tasks, deliverables and due dates. The Consultant may be asked to complete tasks including, but not limited to, those described below in Task 1.

Task 1: Technical Assistance for Local Jurisdictions

On-call technical assistance provided to local jurisdictions in order to overcome specific policy or planning issues in order to advance TOD in the community. This technical support is intended to complement adopted or proposed land use planning processes undertaken by the local jurisdiction in order to overcome specific challenges to the successful implementation of that plan. It is not anticipated to support parcel-level development; instead this assistance will emphasize planning areas consistent with the FOCUS effort to develop complete communities.

Consultant or Consultant team will assist jurisdictions with the following issues:

- Municipal financing mechanisms (both standard and innovative) to finance TOD, including public and private infrastructure, housing, and other related TOD improvements.
- Market demand analysis for retail, commercial, and residential development and supporting financial analysis such as development of pro-formas and return on investment analysis.
- Infrastructure planning and design, including green infrastructure/low-impact development for storm-water management.
- Analysis of strategies to manage gentrification and minimize displacement, including comprehensive and targeted affordable housing strategies.
- Station access for new and existing development, including the needs of pedestrians, bicycles, shuttles, transit, drop-off, and local circulation.
- Parking policy and demand analysis, with an emphasis on the use of *MTC's Parking Policies to Support Smart Growth Toolbox/Handbook*.
- TOD-supportive zoning, form-based codes, and smart growth urban design guidelines to address building form and scale, urban character, connectivity and accessibility, and place-making.
- Sustainability analysis, including modeling of vehicle-miles-traveled (VMT) reductions related to TOD, evaluation of land use alternatives from an emissions/energy efficiency/equity standpoint, etc.

- Civic engagement, including public engagement strategies and workshops/charettes.
- Development of visualization, web-based, or other technical tool, such as GIS mapping or photo-simulations to reflect building types associated with adopted plans.
- Familiarity with planning at brownfield locations.

Additional, related tasks may also be required.

Deliverable #1: Memo documenting specific services to be provided to local government staff.

Task 2: Support for Regional Agencies

Consultant will assist in advancing development of new or existing fund programs. This work will focus on development of recommendations from the MTC report *Financing Transit Oriented Development in the San Francisco Bay Area: Policy Options and Strategies*.

In addition, Consultant will provide technical training sessions to be hosted either at ABAG/MTC offices or at various locations throughout the Bay Area. These trainings will focus on the TOD issues outlined in Task 1.

Deliverable #2: Memo documenting specific services and trainings provided.

APPENDIX B, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Tom Azumbrado
Tom Bates
Dave Cortese
Dean J. Chu
Chris Daly
Bill Dodd

Dorene M. Giacomini
Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Sue Lempert
Jake Mackenzie

Jon Rubin
Bijan Sartipi
James P. Spering
Adrienne J. Tissier
Amy Rein Worth
Ken Yeager

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

___ YES ___ NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

___ YES ___ NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX C, SYNOPSIS OF PROVISIONS IN MTC'S STANDARD CONSULTANT AGREEMENT

The selected consultant will be required to sign MTC's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFQ. In order to provide bidders with an understanding of some of MTC's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.

Termination: MTC may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, MTC will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, MTC will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, MTC may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to MTC, less the costs to MTC of rebidding.

Insurance Requirement: See *Appendix C-1*.

Independent Contractor: Consultant is an independent contractor and has no authority to contract or enter into any other agreement in the name of MTC. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant agrees to defend, indemnify and hold MTC harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of Consultant in connection with the agreement. Consultant agrees to defend any and all claims, lawsuits or other legal proceedings brought against MTC arising out of such negligent or wrongful acts or omissions. The Consultant shall pay the full cost of the defense and any resulting judgments.

Data Furnished by MTC: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("MTC Data") made available to the Consultant by MTC for use by the Consultant in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by the Consultant's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by the Consultant in the context of the Project shall be the property of MTC.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to MTC as a deliverable shall be the property of MTC. Consultant will be required to assign all rights in copyright to such Work Product to MTC.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of MTC.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of MTC. MTC is under no obligation to any subcontractors.

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to MTC for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of MTC can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.

APPENDIX C-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A-X or better.

Yes (✓)	Please certify by checking the box below that required coverage's will be provided within five (5) days of MTCs notice to firm that it is the successful proposer.
—	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnatee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form. MTC, Caltrans, all client jurisdiction and their commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
—	<u>Umbrella Insurance</u> in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
—	<u>Errors and Omissions Professional Liability Insurance</u> (if applicable) in an amount no less than \$2,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT and

	any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.
_____	<u>Property Insurance</u> covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC. If such insurance coverage has a deductible, the CONSULTANT shall also be liable for the deductible.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of MTC's notice to firm that it is the successful proposer.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC's attention no later than the date for protesting RFQ provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.

APPENDIX D, TASK ORDER PROCESS

Task Orders will be numbered sequentially and by Fiscal Year (FY). For example, the first Task Order signed by the parties will be Task Order #1/09. Amendments will be numbered #1/09-1, 1/09-2, etc. The period of performance shall be as set forth in the individual Task Order.

The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The MTC Project Manager (PM), or designee, prepares a draft Task Order to issue to CONSULTANT. The PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2* – CONSULTANT prepares a proposal in response to the draft Task Order. The proposal should follow the Task Order Form format specified herein Appendix D.

Step 3* – The MTC PM reviews CONSULTANT's proposal to determine if it meets the objectives of the draft Task Order and if CONSULTANT's proposed costs are reasonable. The PM may solicit early feedback from the MTC Planning Director at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC shall be incorporated in a draft Final Task Order.

Step 4* – The MTC PM forwards the draft Final Task Order to the MTC Contract Administrator for review and approval.

Step 5* – Once approved, the MTC PM forwards two copies of the Task Order to the MTC Planning Director for review and approval.

Step 6* – The MTC Planning Director signs both copies of a Final Task Order to signify approval and returns them to the MTC PM.

Step 7 – The MTC PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the MTC PM.

Step 8 – The MTC PM sends one copy of the fully executed Task Order to the MTC Task Lead who initiates work, and sends another copy to MTC Accounting to encumber funds against the Task Order. The MTC PM keeps the original fully-executed Task Order for the official project record.

Step 9 – The MTC PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 10 – Once the MTC PM determines the Task Order is complete, the MTC PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to MTC within 30 days. Any balance of budget is made available to spend on future task orders at the MTC PM's discretion.

Step 11 – The MTC PM will annually assess the need for a Contract audit.

**The MTC Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 6.*

APPENDIX D-1
Sample Task Order

1. Task Order No. (include FY)	Example: 1-09; 2-09
2. Title of Task:	
3. MTC Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations.</i> For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work (attached)</u> .
5. Original Maximum Payment:	
6. Amended Maximum Payment:	Include each amendment to maximum payment, by amendment number, for particular fiscal year.
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<input type="checkbox"/> Deliverables
9. DBE Participation, if any (firm name and \$ amount):	
10. DBE Participation to date this fiscal year: (\$ amount and % of Agreement maximum payment):	

7. Payment Terms

A. Deliverables-based.

	<u>Deliverable</u>	<u>Total Cost*</u>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
Total:		\$7.00

*Due upon satisfactory completion as determined by the MTC Project Manager.

METROPOLITAN TRANSPORTATION
COMMISSION

COMPANY NAME

Doug Kimsey, Director of Planning
Date: _____

Signator Name, Title
Date _____

pathname

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

**APPENDIX E,
DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

1. Equal Employment Opportunity. Consultant shall not, on the grounds of race, color, sex, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Consultant non-compliance, MTC may cancel, terminate or suspend the Agreement in whole or in part. Consultant may also be declared ineligible for further contracts with MTC.

Consultant and its subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant and its subcontractors shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth these provisions.

2. Disadvantaged Business Enterprise (DBE) and Small Business Enterprise Policy.

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. If the contract has an under-utilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by using UDBEs as subcontractor or document a good faith effort to meet the goal. If a UDBE subcontractor is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subcontractor if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

C. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

2.1 Prompt Payment of Funds Withheld to Subcontractors

MTC shall hold retainage from the prime Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime Consultant based on these acceptances. The prime Consultant, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime Consultant or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Consultant or subcontractor in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime Consultants and subcontractors.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

2.2 DBE Records

A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" is submitted to the Contract Manager.

1) Prior to the fifteenth of each month, the Consultant shall submit documentation to the MTC's Project Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

(2) The Consultant shall also submit to the MTC's Project Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that

month. This documentation shall be submitted on the Caltrans Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

2.3 DBE Certification and De-certification Status

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Consultant in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

2.4 Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

2.5 Performance of DBE Consultants and Other DBE Subcontractors/Suppliers

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and

installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

3. Title VI of Civil Rights Act of 1964. Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its implementing regulations in 49 CFR Part 21.
4. Debarment. In contracts over \$25,000, Consultant is required to certify, prior to executing a contract, that neither it nor its principals have been debarred from certain federal transactions by any Federal agency and to require any subcontractors with subcontracts over \$25,000 to provide a similar certification. (A copy of the required certification is included with this Appendix.)
5. Audit and Inspection of Records. Consultant shall permit the authorized representatives of DOT, Federal Transit Administration (FTA) or the Federal Highway Administration (FHWA, and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance under this Agreement from the date of this Agreement until three (3) years after the close out of the federal grant from which this Agreement is financed, or four (4) years after the fiscal year of the expenditure, whichever is longer. This requirement must be passed along to subcontractors, excluding purchase orders not exceeding \$25,000.
6. Subcontractors
 - a. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the MTC and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the MTC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subcontractors is an independent obligation from the MTC's obligation to make payments to the Consultant.

- b. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
 - c. Consultant shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by the MTC.
 - d. Any substitution of subcontractors must be approved in writing by the MTC's Project Manager in advance of assigning work to a substitute subcontractor.
7. Federal Grant Requirements. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal funds are imposed on Consultant, including compliance with 49 CFR Part 18, FTA Circular 4220.1D and the current FTA Master Agreement, a copy of which is available through MTC.
8. Identification of Documents. All reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:
- The preparation of this report has been financed in part by grants from the Federal Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.
9. Rights in Data. The Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which MTC or Consultant purchases ownership under this Agreement.
10. State Energy Conservation Plan. Consultant shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 *et seq.*).
11. Clean Air and Water Pollution Act. Consultant agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
12. Restrictions on Lobbying. In agreements over \$100,000, Consultant is required to execute a certificate indicating that no federal funds will be used to lobby federal officials and to disclose lobbying activities financed with non-federal funds. (Certificate attached.)

APPENDIX E-1
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS

(Third Party Contracts and Subcontracts over \$25,000)

Instructions for Certification:

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

(Signature of authorized official)

(Type/print name and title)

APPENDIX E-2
CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of _____ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2009.

By

(signature of authorized official)

(title of authorized official)

APPENDIX E-3

Exhibit 10-O1 Local Agency Proposer UDBE Commitment (Consultant Contracts)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

AGENCY: _____ LOCATION: _____

PROJECT DESCRIPTION: _____

CONTRACT GOAL: \$ _____

PROPOSAL DATE: _____

PROPOSER'S NAME: _____

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED	DBE Cert. No. AND EXPIRATION DATE	NAME OF UDBEs (Must be certified on the date the proposals are opened - include UDBE address and phone number)	PERCENTAGE AMOUNT OF EACH UDBE

For Local Agency to Complete:

Local Agency Contract Number: _____

Federal Aid Project Number: _____

Federal Share: _____

Proposal Award Date: _____

Local Agency certifies that the UDBE certification(s) has been verified and all information is complete and accurate.

Print Name _____ Signature _____ Date _____
Local Agency Representative

(Area Code) Telephone Number: _____

Total Claimed
Participation

\$ _____

%

Signature of Proposer

Date _____ (Area Code) Tel. No. _____

For Caltrans Review:

Print Name _____ Signature _____ Date _____
Caltrans District Local Assistance Engineer

Local Agency Bidder - UDBE Commitment (Rev 3/09)

Distribution: (1) Copy – If this Proposer is successful fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of award. Failure to send a copy to the DLAE within 15 days of award may result in de-obligation of funds for this project.
(2) Original – Local agency files

**INSTRUCTIONS - LOCAL AGENCY PROPOSER- UDBE COMMITMENT
(CONSULTANT CONTRACTS) (Revised 03/09)**

ALL PROPOSERS:

PLEASE NOTE: It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Native American; 4) Women. This information shall be submitted with your proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive

UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, Proposer's Name, and Contract Goal.

The form has a column for the Work Item Number (or Item No's) and Description or Services to be Subcontracted to UDBEs. The UDBE should provide a certification number to the Consultant. Notify the Consultant in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of certified UDBEs to perform the work (must be certified on the date proposals are received and include UDBE address and phone number). Enter the UDBE prime consultant and subconsultant certification numbers. Prime consultants shall indicate all work to be performed by UDBEs including, if the prime consultant is a UDBE, work performed by its own forces.

There is a column for the total UDBE percentage. Enter the Total Claimed UDBE Participation percentage of items of work submitted with the proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See Notice to Bidders/Proposers Disadvantaged Business Enterprise Information to determine how to count the participation of UDBE firms. Note: If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

Exhibit 10-O (1) must be signed and dated by the consultant proposing. Also list a phone number in the space provided and print the name of the person to contact.

For the Success Proposer only, local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of award. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

APPENDIX E-4

Exhibit 10-O2 Local Agency Proposer DBE Information (Consultant Contracts)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

AGENCY: _____ LOCATION: _____

PROJECT DESCRIPTION:

TOTAL CONTRACT AMOUNT: \$

PROPOSAL DATE: _____

PROPOSER'S NAME: _____

[illegible]**For Local Agency to Complete:**

Local Agency Contract Number: _____

Federal Aid Project Number: _____

Federal Share:

Contract Award Date:

Local Agency certifies that the DBE certification(s) has been verified and all information is complete and accurate.

Print Name _____
Signature _____
Date _____

Local Agency Representative

(Area Code) Telephone Number:

Total Claimed
Participation

\$

%

Signature of Proposer

Date (Area Code) Tel. No.

Person to Contact	(Please Type or Print)
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For Caltrans Review:

Print Name	Signature	Date
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Caltrans District Local Assistance Engineer

Local Agency Bidder - DBE Commitment(Rev 3/09)

Distribution: (1) Copy – Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of contract execution. Failure to send a copy to the DLAE within 15 days of contract execution may result in de-obligation of funds for this project.

(2) Original – Local agency files

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION
(CONSULTANT CONTRACTS) (Revised 03/09)**

SUCCESSFUL PROPOSER:

The form requires specific information regarding the consultant contract: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, and Successful Proposer's Name.

The form has a column for the Description or Services to be Subcontracted by DBEs. The DBE should provide a certification number to the prime consultant. The form has a column for the Names of DBE certified consultants to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter DBE prime consultant's and subconsultants' certification numbers. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation percentage of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers/Bidders Disadvantaged Business Enterprise Information to determine how to count the participation of DBE firms.

Exhibit 10-O (2) must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer, Local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

APPENDIX E-5

UDBE INFORMATION—GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

MTC established an Under-utilized Disadvantaged Business Enterprise (UDBE) goal of 4% for this project. The information provided herein shows that a good faith effort was made.

Bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder – UDBE Commitment” form indicates that the bidder has met the UDBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder – UDBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of UDBE Commitment” of the Special Provisions:

- A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified UDBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to UDBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate UDBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the bidder's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE:

Names, addresses and phone numbers of rejected UDBEs and the reasons for the bidder's rejection of the UDBEs:

- E. Efforts made to assist interested UDBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to UDBEs:

- E. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
<hr/>		
<hr/>		

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):
